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Customs Union: Old Instrument, New Function in EU-Turkey Relations

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The European Council's conclusions on external relations published on 1 October 2020 hint at the readiness of the European Union (EU) to enter into a new stage in its relations with Turkey. On the one hand, the EU "strongly condemns violation of the sovereign rights of the Republic of Cyprus" and "calls on Turkey to abstain from similar actions in the future, in breach of international law". It also insists on resolving differences "through peaceful dialogue" – a clear hint at Turkey's extensive show of military might in the Mediterranean – and underlines its determination to apply sanctions to Turkey. On the other hand, the EU has agreed "to launch a positive political EU-Turkey agenda with a specific emphasis on the modernisation of the Customs Union and trade facilitation, people-to-people contacts, High level dialogues", and "continued cooperation on migration issues". The essential condition to kick off this new agenda is to sustain the "constructive efforts to stop illegal activities vis-à-vis Greece and Cyprus". Based on joint research conducted by six European think tanks, we suggest that the EU should explicitly separate the accession framework from the modernisation of the Customs Union. Additionally, we lay out a framework for the negotiations on a modernised Customs Union.

Up until now, the EU has adhered to the decision of its General Affairs Council announced on 26 June 2018 that rules out not only the opening of any new chapter in the membership process, but also any "further work towards the modernisation of the EU-Turkey Customs Union" (CU). Up until now, Brussels has based progress in the membership process and the start of talks on the modernisation of the CU on two conditions: i) initiatives towards democratisation and

improving rule of law, and ii) greater alignment with the EU's foreign policy towards third countries. Yet, this strategy has not worked. Stalling the membership process, blocking negotiations on the CU, and cancelling high-level dialogues have neither prevented democratic backsliding in Turkey, nor prompted Ankara to desist from the militarisation of its policy towards the EU member states in the Eastern Mediterranean. In contrast to its unyielding posi-

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tion, the EU has continued to depend on Turkey's cooperation on migration, counter-terrorism, and defence.

In the meantime, relations of EU countries with Turkey have deteriorated rapidly. Some member states, such as France, Germany, and to a lesser degree Italy and Poland, increasingly see Turkey as a challenge to their vital interests. For others, Turkey has even turned into an adversary that is threatening their security, as is the case with Cyprus and Greece. Turkey piled refugees at the Greek border and tried to force Athens to permit the influx of irregular migrants. In the eyes of Brussels, Ankara violated the Exclusive Economic Zone of the Republic of Cyprus and challenged the sovereign rights of Greece. The Turkish navy intercepted Norwegian, Italian, and Israeli research vessels in the Exclusive Economic Zone of Cyprus. Turkish warships at one point appeared ready to fire at ships of the French and Greek navies. Turkey temporarily blocked NATO planning for the Baltic states and Poland to force NATO members to classify Syrian Kurdish forces as terrorist organisations.

Given the foreign policy challenges that Turkey increasingly poses to EU member states and the EU as a whole, Brussels' earlier refusal to consider the renegotiation of the Customs Union – primarily due to Turkey's backsliding in terms of human rights and the rule of law – appears more and more like the *lieu de mémoire* of a past decade, when the EU still thought of itself as having the leverage to urge Turkey towards democratisation.

A Watershed Approach in the EU's Policy towards Turkey

This new reality suggests that the need for negotiations that utilise both carrots and sticks has replaced the former one-sided leverage the EU once had over Turkey. Up until recently, the EU, refusing almost all Turkish demands – such as visa liberalisation, high-level dialogues, and the Customs Union – had little to offer in bargaining

with Ankara. Having nothing to lose in its relations with Europe, Ankara had no incentive to take the EU's interests or those of EU member states into account.

The recent apparent shift in the EU position, thus, did not happen in a vacuum. The CU is perhaps the most influential tool that the EU can use to bargain with Turkey. Moreover, there is also interest in almost all member states for a deepened Customs Union. The EU General Affairs Council's decision on 26 June 2018 to not open new chapters in the membership process is consistent. It is all too obvious that Turkey no longer meets the Copenhagen criteria. Yet, the Council's decision to apply the very same framework to the handling of the CU reflects the attitudes of France and Germany in particular, and it disregards the leanings of other member states.

The EU countries that were researched, such as Spain, Poland, Italy, Greece, and also France and Germany, have strong economic interests in the deepening of the somewhat outdated trade agreement from 1995. Be it the business communities or the ministries of trade, the main economic stakeholders in each of these six countries are cognisant of the great potentials of trade benefits that an extended CU could deliver. The panoply includes joint ventures in defence, renewables, the finance system, and construction. A new agreement could grant easier access to state tenders, and the country's huge domestic market. It could utilise Turkey's potential as a tourist-sending country and allow for cabotage. Turkey is still seen as a promising hub for Central Asian and Middle Eastern markets. A deepened CU would ensure existing value chains and underscore Turkey's credibility as an investment destination.

Notwithstanding these tangible benefits for EU member states, the political stakeholders especially are well aware that Turkey would profit more from a deepened CU given its economic woes, evidenced by the decline in per capita income in recent years. Moreover, there is the risk that the upgrading of the CU might appear as a reward for Turkey, given its hardball stance

in the Eastern Mediterranean, its utilisation of migratory movements, its rapprochement with Russia and seemingly decreasing level of solidarity with NATO, as well as its interventions in Syria, Libya, and recently in the Caucasus. Nevertheless, foreign policy concerns dominate the discussion in almost all countries that participated in the research. Thus, disentangling the renegotiation of the Customs Union from the accession framework and making it conditional on alignment in foreign policy and security matters could help up the ante for Turkey in its unilateral and militaristic foreign policy.

In a nutshell, bringing the modernisation of the CU to the negotiation table provides the EU with the opportunity to capitalise on Turkey's continued interest in the matter. It will help Europe to establish a rules-based communicative space where the EU and Turkey can negotiate their positions. As such, the EU can contribute to the de-escalation of the present conflicts with Turkey without jeopardising Ankara's cooperation. Moreover, re-socialising Turkey back into diplomatic circles may help Europe convince Turkey to abide by agreements. Last but not least, the process of renegotiating the Customs Union has the potential to help Europe create a common framework for relations with Turkey in ways that render Turkish divide-and-rule policies ineffective.

Recommendations for the EU

Brussels should, however, pay attention to some serious pitfalls and sort out essential internal differences in order to put the negotiations on the CU to good use while bargaining with Turkey.

First and foremost, member states should accept that they have different views concerning the political implications of a renegotiated Customs Union and, particularly, the CU's link to Turkish membership in the EU. The national approaches vary considerably on this. Interestingly and similarly to Ankara, Athens strictly opposes the idea that a modernised Customs Union may

function as a substitute for Turkey's membership. In France, out of the public eye, some pundits are pondering exactly this idea. Brussels, thus, should hold the EU accession negotiations — and, correspondingly, expectations towards democratisation — separately from the modernisation of the CU. This is not to suggest that the EU is no longer interested in Turkey's democratic backsliding. It is instead an acknowledgment of the limits to the EU's normative power over Turkish domestic politics, on the one hand, and the growing necessity for cooperation with Turkey in realms of foreign policy and security, on the other.

Secondly, the EU should prove its commitment to establishing workable relations with Turkey. To this end, Brussels has to realise the highly varied discussions on the matter, including the CU, as well as the different degrees of preparedness in different member states. In some countries, governments, business communities, and NGOs have already made up their minds, whereas in other states the issue hardly attracts attention. Brussels needs to engage in strategic communication with the member states, drawing attention to the economic benefits and underlining that the upgrading of the CU is a separate issue from Turkey's future in the EU.

Thirdly, the EU should send a clear message to Turkey that it is willing to deepen the existing trade agreement only if certain conditions are fulfilled. Turkey should address and repair the mounting number of trade irritants in recent years within the context of the current agreement. This situation was reported without exception by all the countries that participated in the joint research. Ankara should also observe its commitments to cooperation with Europe over migration management. As a third condition, Turkey should re-establish itself as a reliable partner for European security. This is only possible through a sincere display of interest in multilateralism and diplomacy. Ankara should end military threats in the Eastern Mediterranean and act according to the common interests of the transatlantic alliance.

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Fourthly, the Customs Union should be the central – but not the only – instrument of the EU to re-engage Ankara. In its conclusions, the European Council talked of easing people-to-people contacts, thus hinting at steps towards visa liberalisation, at least for some groups of travellers from Turkey. Here, Brussels should come forward with stronger commitments because dealing with the issue is long overdue. Additionally, to establish itself as an objective and fair actor, Brussels should strike a balance between the internal solidarity principle and a realistic and impartial policy in the Eastern Mediterranean. This requires signalling that justifiable Turkish claims are being heard, but the methods that Ankara is deploying are unacceptable, as they fall far short of the requirements of international law and diplomatic norms.

Recommendations for Turkey

Turkey should be aware that time is working against it. Ankara is experiencing a rapid deterioration of its image as an economic destination. The shift to executive presidentialism has brought with it the crippling of the trade bureaucracy and a fast decline in the level of trust in the judiciary. French companies no longer feel secure in Turkey, and German business has time and again expressed concerns about the safety of Turkish personnel. Both German and French companies have already started to look for alternative investment destinations, as manifested in the recent decision of Volkswagen to abort plans for a new plant in Turkey.

Moreover, Ankara faces the unwelcome prospect of public sentiment towards Turkey turning sour, even in countries such as Italy, Spain, and Poland, where the general

public holds positive feelings for Turkey. Not only are Turkey's democratic backsliding and militaristic foreign policy triggering this change, but also trends towards right-wing populism in Europe.

Last but not least, the Turkish leadership's clinging to some unorthodox views on economic matters and the country's economic future risks scuppering Turkey's ongoing demand for a modernised CU. The insistence on keeping interest rates low at the expense of usurping control of monetary policy from the theoretically independent central bank is a case in point. Additionally, despite all of its official pro-CU rhetoric, the Turkish government has yet to carry out several reforms to make a deepened Customs Union work. Cases in point are state aid, institutionalised discrimination of foreign tenderers, and highly non-transparent tendering.

A deepened Customs Union may well help keep Turkey close to Europe through its potential spill-over effects on the judicial system and transparency in the financing mechanisms used by the ruling party. Nevertheless, without a strong display of will by Ankara to reverse the country's democratic backsliding, a deepened Customs Union alone will not be sufficient to keep Turkey in Europe.

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